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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.409 OF 2002

Baban Balu Gungune)
Convict No.C/12424)
present at Yerawada Central Prison)
Pune-6.).. APPELLANT

VERSUS

The State of Maharashtra).. RESPONDENT

Mr.D.G.Khamkar for the Appellant.

Dr.F.R. Shaikh, Additional Public Prosecutor,
for the Respondent.

**CORAM: V.G. PALSHIKAR, Acg. C.J. &
SMT.NISHITA MHATRE, J.**

DATED: 11TH SEPTEMBER 2006

ORAL JUDGMENT : (PER SMT.MHATRE, J.)

. The accused challenges through this Appeal the judgment and order of the 4th Additional District and Sessions Judge, Thane, in Sessions Case No.152 of 2001. By this judgment, the accused has been convicted under Section 302 of the Indian Penal Code and has been sentenced to suffer imprisonment for life. He has also been directed to pay a fine of Rs.5,000/- and in default to undergo rigorous imprisonment for three years.

2. The prosecution has relied on three witnesses in order to substantiate the charge against the accused of killing his wife Renuka. The accused attacked his wife

on the neck with an axe. Their son Ravindra saw the accused assaulting his mother. The accused ran away from the spot when Ravindra and other relatives raised an alarm.

3. The first witness examined by the prosecution is the brother of the accused. He has deposed that he saw the accused inflicting a single blow with an axe on the neck of the deceased. This witness is the complainant. In the cross-examination, he has admitted that he and his three other brothers including the accused stayed separately. His house is at a distance of 15 to 20 feet from that of the accused. He has stated that Parvati, his sister-in-law, called out to Ravindra who was then sitting with him. Ravindra rushed to his own house followed by Ganpat and himself. When these persons entered the house, they found the victim Renuka lying injured on the ground. Nobody else was with her at that point of time.

4. The next witness who has been examined by the prosecution is Parvati, the sister-in-law of the accused. She has deposed that she heard a noise emanating from the house of the accused when she was proceeding towards the bathroom. She, therefore, cried out to Ravindra who rushed instantaneously. On reaching his house, Ravindra shouted that his father had killed his mother. The witness has then stated that the

accused threw the axe in the forest and ran away. When she entered the house, she found that Renuka had received an injury on her neck. This witness has in the cross-examination described the temperament of the accused by stating that he had a quarrelsome nature and that he would beat his wife and children under the influence of liquor. Admittedly, this witness is not an eye witness. However, she has seen the accused running away from his residence.

5. The last witness who have been examined by the prosecution is Ravindra, the son of the accused and the victim. He has corroborated the testimony of PW1 and PW2. He has spoken about the assault on his mother by his father. He has seen the assault which led to injuries on the neck and the head of the victim. On seeing his mother, he cried out to his uncle. The accused raised the axe in order to assault Ravindra. However, since his uncle reached the spot in response to his cries, the accused ran away. This witness has admitted that his father often stayed away from home under the influence of liquor. He has stated that it was he who handed over the axe to the police. All other suggestions put to this witness on behalf of the defence have been denied.

6. The learned Counsel appearing for the Appellant has assailed the judgment on the ground that the

witnesses examined do not establish the culpability of the accused. The learned Counsel points out the contradictions in the testimonies of the witness, namely, that according to PW3, the axe was handed over by him to the police; whereas both PW1 and PW2 stated that the axe was hidden in a forest. He then urges that the evidence on record falls short of proving that the accused was guilty. The learned Counsel submits that in all probability the accused had dealt the fatal blow in a drunken stupor. He submits that there was neither any motive nor any intention on the part of the accused to kill his wife. The prosecution has failed to establish that the accused had any motive or intention to kill his wife. In such circumstances, the learned Counsel submits that the accused cannot be held guilty of an offence punishable under Section 302 of the Indian Penal Code.

7. We have scrutinised the evidence on record and find that we are unable to accept the conviction of the accused under Section 302 of the Indian Penal Code. On reappreciating the evidence on record, we find that the three witnesses examined on behalf of the prosecution have corroborated each other in material particulars. They have established that the accused has inflicted the fatal injury on the neck of the deceased with an axe. The post mortem report has been admitted by the Appellant and, therefore, no Doctor has been examined to

prove the same. It indicates that the cause of death is shock and haemorrhage due to injuries to major vessels (carotid and adjacent vessels) of neck. Therefore, the blow inflicted by the accused on the neck of the victim was on a vital part of the body resulting in her death. The death of the victim is, therefore, homicidal and the prosecution has established that the accused has committed an offence of culpable homicide. However, on an assessment of the evidence on record, we do not find that this culpable homicide amounts to murder. The prosecution has failed to establish either the motive for the assault or the intention of the accused to kill the victim. Hence, the offence committed by the Appellant is that of culpable homicide not amounting to murder and is punishable under Section 304 Part II of the Indian Penal Code. The Appellant has been in jail ever since he was arrested on 10th December 2000. The accused is, therefore, sentenced to suffer imprisonment which he has already undergone. The fine imposed on the Appellant is set aside.

8. Appeal is partly allowed. The conviction and sentence under Section 302 of the Indian Penal Code is set aside. Instead, the accused is convicted under Section 304 Part II of the Indian Penal Code and is sentenced to suffer imprisonment which he has already undergone. The fine imposed on the Appellant is set aside.

(V.G.PALSHIKAR, Acg.C.J.)

(SMT.NISHITA MHATRE, J.)